

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Amendment of Parts 73 and 74)
of the Commission's Rules)
to permit unattended operation)
of broadcast stations and)
to update broadcast station)
transmitter control and)
monitoring requirements)

MM Docket No. 94-130

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To: The Commission

COMMENTS OF
NATIONAL PUBLIC RADIO, INC.

Introduction

National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the Commission's proposal to authorize unattended operation of broadcast stations in the above-captioned proceeding. See Notice of Proposed Rule Making, MM Docket No. 94-130, rel. Dec. 7, 1994 ["NPRM"].

NPR is a non-profit, noncommercial membership organization dedicated to the development of a diverse public radio service for the American public. NPR provides programming, satellite interconnection, and representational services to more than 500 full-service public radio stations across the United States. It produces and distributes such acclaimed programming as ALL THINGS CONSIDERED, MORNING EDITION, TALK OF THE NATION, and PERFORMANCE TODAY.

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I. The Commission Should Adopt its Proposal to Waive the Licensed Duty Operator Requirement But Reconsider the Three Minute Rule

NPR supports the Commission's efforts to eliminate regulatory requirements that no longer serve a beneficial purpose. As the Commission correctly notes, "[o]ver the years we have altered our approach to technical regulation in the broadcast services, shifting away from step-by-step 'how to' language in the rules, to focusing more on licensees' exercise of good judgment." NPRM at para. 7. Reevaluation of existing regulatory requirements is also appropriate in light of technical advancements in broadcasting. See NPRM at para. 5 (noting improvements in the stability, reliability and automatic control of transmission systems.)

For these reasons, NPR believes it is appropriate to eliminate the requirements that all stations employ a duty operator and that such operators possess at least a Restricted Radiotelephone Operator Permit ("RP"). Because the current RP process requires only a rudimentary understanding of transmitter operations, the requirement to obtain a license offers little assurance that stations will operate within specified technical parameters. Moreover, the obligation to employ a duty operator can function as a disincentive to the automation of the monitoring and control of transmission equipment. Finally, licensees that choose not to automate their transmitter controls are and will continue to be ultimately responsible for compliance with the Commission's technical requirements and, therefore, have a strong incentive

to employ competent technical personnel.

While the elimination of the licensing and duty operator requirements is clearly justified, the Commission should reconsider the three minute rule. Since the Commission's technical rules are intended to avoid harmful interference, the mere occurrence of an out-of-tolerance status indicator should not trigger an obligation to immediately take the station off the air. Rather, applying a time limit to when interference actually occurs would better ensure that such interference is remedied in a timely fashion, while affording stations an adequate opportunity to correct out-of-tolerance conditions not resulting in harmful interference.¹

Indeed, the Commission might take advantage of its proposed telephone database of licensee contact persons to ensure the immediate correction of interference conditions. See NPRM at para. 24. Thus, for instance, if an interference condition were reported to the Commission staff, the contact person could be notified and immediately attend to the situation, including, if necessary, by taking the station off the air.² Of course, a station would be obligated to address interference conditions reported directly to it or of which it

¹ Since some stations may be unable to operate into a dummy load, and some equipment malfunctions may require on-air diagnosis and correction, see NPRM at para. 29, the Commission should expressly authorize stations to diagnose and correct technical problems during night-time operation or under other circumstances in which harmful interference is unlikely to occur. Cf. 47 C.F.R. Sec. 73.72 (authorizing AM stations to test and maintain their transmitting systems during the hours between midnight and sunrise, provided no interference is caused to other stations).

independently becomes aware.

Alternatively, the Commission might adopt a longer time limit in which a licensee must correct out-of-tolerance conditions or take the station off the air. Particularly for remotely controlled stations, the proposed three minute rule may not afford an adequate opportunity for stations to make necessary technical corrections in many instances. Since the Commission is prepared to allow AM stations with directional arrays up to 24 hours in which to diagnose and correct out-of-tolerance conditions, NPRM at paras. 30-31, it would be appropriate to permit other stations a longer period of time, perhaps as much as several hours,³ to determine the cause and, to the extent necessary, remedy for apparent out-of-tolerance conditions.

² To ensure timely station responses and to avoid the need for frequent updating of the database, stations might be permitted to list multiple contact persons.

³ Since many transmitter towers are located on mountain tops outside population centers, it may take as long as three hours for a technician to determine the nature and extent of a transmitter malfunction or, alternatively, that the alert is simply a status malfunction. See General Accounting Office, Federal Fees for Communications Sites, at 3 (July 1994) ("Lands on mountain peaks or otherwise at high elevations near population centers are the most desirable places to locate communications sites."]

II. To Avoid Imposing Unnecessary Regulatory Burdens, Contrary to the Expressed Purpose of this Proceeding, the Commission Should Reconsider Certain Aspects of its Proposal

While the Commission has generally sought to rely on licensee judgment regarding their technical operation rather than detailed regulatory requirements,⁴ several elements of the Commission's proposed rules would appear to contravene that policy objective by imposing new and unnecessary regulatory obligations. In particular, the Commission has proposed to require licensees to continuously monitor carrier frequency and modulation levels as part of a new list of minimum monitoring requirements, NPRM at paras. 32-36, and to account for monitoring equipment errors and calibration procedures as part of the operating parameters. NPRM at paras. 37-38.

As a practical matter, the technical parameters proposed for ongoing monitoring are unlikely to produce out-of-tolerance operation. Current transmission equipment is sufficiently advanced so that little fluctuation is likely to occur within, for instance, modulation and carrier frequency levels. Indeed, licensees are not presently obligated to routinely measure carrier frequency, NPRM at para. 36, and the Commission relaxed its modulation requirements in recognition that fluctuations in modulation levels are unlikely to cause interference to co-channel or adjacent channel frequencies. FM Subsidiary Communications Authorizations, 55 R.R. 2d 1308 (1984). Absent

⁴ See, e.g., NPRM at para. 39 (proposing to permit transmitter and antenna maintenance by anyone authorized by the licensee).

new evidence of interference problems, or safety or other legitimate concerns, there is no justification for the proposed mandatory continuous monitoring requirements.⁵

More fundamentally, requirements such as these are difficult to square with the Commission's expressed desire to avoid regulating the manner in which licensees comply with their technical parameters. As the Commission itself recognizes, "the optimum monitoring schedule varies from parameter to parameter and station to station." NPRM at para. 33. In addition, the NPRM makes clear that the Commission's reliance on licensee discretion is not boundless, and stations must develop effective monitoring programs.

We caution licensees that an occasional glance at a few meter readings does not and cannot constitute an adequate monitoring program. Licensees must implement monitoring procedures to detect and correct problems before technical limits are exceeded.

For this reason, moreover, there is no need to require licensees to include calibration tolerances within permissible operating tolerances. See NPRM at paras. 37-38.

In sum, having established the obligation to operate within technical limits, there is little justification -- as the Commission otherwise recognizes -- for imposing specific requirements for how licensees meet that obligation.⁶


⁵ By comparison, it may be appropriate to mandate continuous monitoring of tower lights, given the relatively small cost of automatic monitoring devices, the ability of licensees to share this responsibility, 47 C.F.R. Sec. 73.1213(c), and the potential implications of inadequate monitoring.

Conclusion

NPR supports the Commission's proposal to eliminate the licensed duty operator requirement, but urges the Commission to amend its proposed rules as specified above.

Respectfully Submitted,

NATIONAL PUBLIC RADIO, INC.


Theodore A. Miles
Vice President, Legal Affairs
& General Counsel
Mary Lou Joseph
Vice President, National Affairs
Donald Lockett
Vice President, Audio Engineering
Michael Starling
Director, Audio Engineering
Gregory A. Lewis
Assistant General Counsel
635 Massachusetts Avenue, N.W.
Washington, DC 20001-3753

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⁶ As noted above, however, the Commission might facilitate the correction of interference conditions as they arise through its proposed telephone database.